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KENNETH R. GLASER MICHAEL E. MARTIN GARDERE WYNNE SEWELL LLP 1601 ELM STREET, SUITE 3000 DALLAS, TX 75201				
EXAMINER				
HOLLOWAY III, EDWIN C				
ART UNIT		PAPER NUMBER		
2612				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/693,748

**Applicant(s)**

WAGGAMON ET AL.

**Examiner**

Edwin C. Holloway, III

**Art Unit**

2612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 6 and 8-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6 and 8-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

***EXAMINER'S RESPONSE***

1. Applicant's submission filed on 12-24-2008 has been entered. Claims 6 and 8-12 are pending. The examiner has considered the new presentation of claims and applicant's arguments in view of the disclosure and the present state of the prior art. And it is the examiner's position that the claims are unpatentable for the reasons set forth in this Office action:

***Claim Objections***

2. Claim 6 and 12 are objected to because of the following informalities:

Currently amended claim 6 is missing the part (iii) of the previously amended version of the claim without showing deletion of the part (iii) by brackets or lining through. The examiner is considering part (iii) to be deleted from the claim. Since the deletion was not clearly shown<sup>0</sup>, additional rejections directed to the subject matter of part (iii) are also included in this action. Applicant is reminded to use proper claim amendment notation in any future submissions.

New claim 12 depends from claim 6 but refers to "the changing synchronization value" of claim 9. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 6 and 8-12 are rejected under 35 U.S.C. 112, first paragraph, as failing to

comply with the enablement requirement. Part (iii) of claim 6 contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Part (iii) of claim 6 includes processing circuitry storing information "randomly" in an unused discrete memory location or "randomly" replacing information stored in one of the used, discrete memory locations. Page 11 of applicant's original written description discloses processing circuitry automatically randomly stores information in unused location so there is no need for any type of means such as an external manually actuated switch for selecting the precise memory location. This specifies only that a manual external switch is not used, but does not provide an enabling disclosure of what circuitry or processing is used to select the memory location. Only a black box decoder circuitry 56 is shown connected to memory 58 in fig. 2. An address circuit or device is needed to select a memory location and such device would obviously include an address manager, address register, pointer, and/or distributor. Applicant's arguments contend that any such device must be non-random, making unclear how the instant specification enables one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

***Claim Rejections - 35 USC § 102 and 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 6 and 8-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Bruwer (US 5868904).

Bruwer'904 discloses a secure self learning system with reference to garage door opening in col. 1 lines 22-23. A radio frequency transmitter designated for a manufacturer (manufacturer master key) and having a unique code (unique serial number 62) and multibit hopping codes (32 bit encoded string 70) is included in fig. 2 and col. 14 line 19 - col. 16 line 20. A receiver with memory 84 and processing circuitry 31,100,102, etc. for learning transmitter information is described in col. 19 line 37 - col. 20 line 36. Learning plural transmitters is disclosed in col. 9 line 65. Bruwer discloses storing hopping code information or parameter set in available locations of memory during the learn mode (col. 17 line 26 - col. 18 line 2 and col. 19 line 37 - col. 20 line 35). Available locations are considered to be unused. The selected location can be managed by a variety of schemes including cycling through locations and allowing the user to choose. The limitation of replacing information if all locations are used need not be given weight because it is claimed in the alternative. Further, replacing information is disclosed in col. 2 lines 2-21 of Bruwer.

Regarding the means for generating a multi-bit changeable hopping code, the hopping code being generated by a non-linear function responsive to a plurality of input parameters, this limitation is anticipated by the non-linear encoder 18 having an encoding algorithm to produce a 32 bit code in response to a plurality of input parameters including secret key (key 64 from key storage 22), sync value (counter 66 from counter storage 16), check value (management code 68 from management storage 17) and button value (52 from button encoder 14) in figs. 1 and 2 and corresponding description.

Regarding claim 8, multibit secret key is provided by the 64 bit key 64 from key storage 22. Col. 7 line 29 specifically refers to a secret key.

Regarding claim 9, sync value changing each time button pressed is provided by the counter information 66 from counter storage 16 activated by buttons 48 to indicate number of times used in col. 11 lines 28-41 and col. 12 lines 6-24.

Regarding claim 10, check value is provided by the management code 68 from management code storage 17 used for integrity check in col. 12 lines 31-45 and col. 19 lines 7-23.

Regarding claim 11, button value is provided by the button information 52 from button encoder 14 in col. 14 lines 38-53 and col. 15 line 61 - col. 16 line 12.

Regarding claim 12, changing the hopping code in response to the changing sync code is provided by encoding the counter information with the non-linear encoder in col. 12 lines 6-24.

8. Claims 6 and 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Brewer'904 (US 5686904) as applied above in combination with Roesgen (US 4800524).

Regarding random storing or replacing in part (iii) of claim 6, user input in Bruwer may be random, such as direct input on a keypad or buttons such car stereo presets. Cycling through memory may also be random. But random is not expressly disclosed in Bruwer. The limitation of randomly replacing information if all locations are used need not be given weight because it is claimed in the alternative. Further, replacing information is disclosed in col. 2 lines 2-21 of Bruwer.

Roesgen discloses an analogous art memory with pointer that may be accessed consecutively or in a random manner. See col. 1 lines 35-48.

Regarding claims 6 and 8-12, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included in Brewer '904 randomly storing or replacing information in view Roesgen disclosing accessing such memory in a random order scheme that is suggested by Bruwer disclosing next learning pointer can be managed according to a variety of different schemes.

9. Claims 6 and 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brewer'904 (US 5686904) as applied above in combination with Sullivan (US 4484262).

Regarding random storing or replacing in part (iii) of claim 6, user input in Bruwer may be random, such as direct input on a keypad or buttons such car stereo presets. Cycling through memory may also be random. But random is not expressly disclosed in

Bruwer. The limitation of randomly replacing information if all locations are used need not be given weight because it is claimed in the alternative. Further, replacing information is disclosed in col. 2 lines 2-21 of Bruwer.

Sullivan discloses an analogous art shared memory device that randomly distributes information from a plurality of sources S to a plurality of memory units U. The plural sources and plural memory units correspond to the plural transmitters and plural memory banks of Bruwer. Random number generator 426 and distributor 421 may provide the random distribution (fig. 4). See the abstract and col. 5 line 57 - col. 6 line 20.

Regarding claims 6 and 8-12, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included in Brewer '904 randomly storing or replacing information in view Sullivan disclosing random distribution of information from plural sources to plural memory units that is suggested by Bruwer disclosing memory with a plurality of blocks for storing information from a plurality of source transmitters using a next learning pointer that can be managed according to a variety of different schemes.

10. Claims 6 and 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brewer'904 (US 5686904) in combination with Roesgen (US 4800524) or Sullivan (US 4484262) as applied above and further in view of Heitschel '118 (US 4750118) or Heitschel '986 (US00RE37986E).



Heitschel'118 discloses an analogous art GDO receiver with random access memory (RAM) in CPU 44 for storing transmitter codes. If all memory location have been used, storing a new code will erase or overwrite at least one old code. See col. 4 lines 58-68. Heitschel '968 is a reissue of Heitschel '118 and includes selecting a memory address to be erased if all location are used in claim 24.

If replacing information if the memory is full is required by the claims, then such would have been obvious in view of Heitschel '119 or '986 and suggested by the replacing in Brewer.

#### ***Response to Arguments***

11. Applicant's arguments filed 12-24-2008 have been fully considered but they are not persuasive and/or moot in view of new grounds of rejection.

The argument that the applied art lacks "means for generating a multi-bit changeable hopping code, the hopping code being generated by a non-linear function responsive to a plurality of input parameters" is not persuasive because such is anticipated by the non-linear encoder in figs. 1 and 2 of Bruwer '904.

The amendment removed limitations from the claims, necessitating new 102 rejections.

#### ***Conclusion***

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37

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CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

#### ***CONTACT INFORMATION***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edwin C. Holloway, III whose telephone number is (571) 272-3058. The examiner can normally be reached on M-F from 9:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Zimmerman, can be reached on (571) 272-3059.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

3/26/2009  
(571) 272-3058

/Edwin C. Holloway, III/  
Primary Examiner, Art Unit 2612